

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MARSH SUPERMARKETS, INC.,)	
)	
Plaintiff/Counterclaim-Defendant,)	
)	
v.)	Cause No. 1:09-CV-0458-DFH-DML
)	
DON E. MARSH)	
)	
Defendant/Counterclaim-Plaintiff.)	
)	
v.)	
)	
EMPLOYMENT AGREEMENT BY AND)	
BETWEEN DON E. MARSH AND)	
MARSH SUPERMARKETS, INC.)	
DATED AUGUST 3, 1999, AS)	
AMENDED)	
JANUARY 1, 2005 and)	
DECEMBER 30, 2005,)	
)	
Third-Party Defendant.)	

**RESPONSE IN OPPOSITION TO DON E. MARSH'S
RENEWED MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS**

Marsh Supermarkets, Inc. (the "Company") agrees that its First Amended Complaint does not warrant any additional briefing on Don E. Marsh's motion for partial judgment on the pleadings. The First Amended Complaint merely conformed the Company's pleading to the facts and legal issues briefed by the parties. *See* Response in Opposition to Don E. Marsh's Motion for Partial Judgment on the Pleadings, p. 3 n.4 (Docket No. 25) (citing Seventh Circuit authority that a party may supplement its complaint in a brief in opposition to a motion for judgment on the pleadings). Because no new issues or claims were raised by the filing of the First Amended Complaint, the Company agrees that the fully-briefed motion for partial judgment on the pleadings is ripe for decision. The Company incorporates by reference

its Response in Opposition to Don E. Marsh's Motion for Partial Judgment on the Pleadings (Docket No. 25) and respectfully requests that the Court deny Mr. Marsh's motion for partial judgment on the pleadings.

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Marsh Supermarkets, Inc. and Third-Party
Defendant Employment Agreement by and
between Don E. Marsh and Marsh
Supermarkets, Inc. dated August 3, 1999, as
amended January 1, 2005 and December 31,
2005*

CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2009, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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